IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.332 OF 1999

Eric Kwado Amoako ...Appellant.

V/s

Narcotics Control
Bureau & Anr. ...Respondent.

Mr. R.B. Amrolia and Ms. Y.N. Katpitia for the appellant.

Mr. P.S. Thakkar for respondent No.1.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 28th March, 2005

P.C.:

1. Heard the learned Counsel for the appellant and the learned Counsel for the State.

2. Appellant is challenging the order passed by the Special Judge under N.D.P.S. Act for Greater Mumbai in N.D.P.S. Special Case No. 119 of 1995. By the said Judgment and Order, the Trial Court was pleased to convict the appellant/original accused for an offence punishable under sections 21 and 28 read with sections 23 and 29 of the N.D.P.S. Act and the appellant/original accused was sentenced to undergo R.I. for 10 years and was directed to pay fine of Rs 1 lac on each count and in default to undergo sentence of one year R.I.

3. The learned Counsel appearing on behalf of the appellant submits that she does not wish to challenge the judgment and order on the point of conviction. She submits that already the appellant has undergone almost 10 years of sentence and he shall be completing the period of 10 years on 9th May, 2005. She submits that, however, so far as the sentence in default of fine is concerned, this court may consider reducing the said sentence. It appears that the accused is a resident of Ghana and is not in a position to pay the amount of fine of Rs 1 lac.

4. I have perused the judgment and order of the Trial Court as also the evidence which is adduced by the prosecution. The only question which falls for consideration is whether this is a fit case for reduction of the sentence in default of payment of fine. Taking an over all view of the matter and taking into consideration the facts and circumstances of the case and the fact that the appellant is in jail continuously since 19th May, 1995 without any remission or without being released from the prison, this is a fit case where some leniency should be shown to the appellant.

5. In the result, since the appellant is not in a position to pay the amount of fine, in default of payment of fine, he shall be released after 15 days on all three counts. Appeal is partly allowed. Applicant shall complete his sentence of 10 years for the remaining period and further 15 days in the event of non-payment of fine. The appellant, thereafter, shall be released forthwith unless he is otherwise required in any other case. After his release, the appellant shall forthwith report to his parent country. Writ of this Hon'ble Court to be sent to Nagpur Central Prison where the appellant is lodged or any other Prison where he may be transferred.

V.M. KANADE, J.